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09/941,327	08/29/2001	Swaminathan Jayaraman	638.45	6222

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EXAMINER

BUI, VY Q

ART UNIT	PAPER NUMBER
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3731

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DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/941,327

Applicant(s)

JAYARAMAN, SWAMINATHAN

Examiner

Vy Q. Bui

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,12-17 and 23-36 is/are pending in the application.
- 4a) Of the above claim(s) 12,17,27,30 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,13-15,23-26,28,29,31,32 and 34-36 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 8. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 12, 17, 27, 30, 33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species 11 shown in Fig. 13, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the coating layers must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2, 25, 32 are rejected under 35 U.S.C. 112, first paragraph, because the specification does not enable any person skilled in the art to which it pertains, or with

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which it is most nearly connected, to fully appreciate the invention commensurate in scope with these claims. The specification does not provide any definition for the recitations "closed cells" and "open cells". Although the drawings provide some examples for "closed cells" and "open cells", there is no definition for the recitations. For one of ordinary skill in the art, a cell is conventionally considered as a radial opening and the struts that enclosed the opening. Without any definition in the specification, it is not possible to appreciate what is covered by the recitation "open cells".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by PENN et al. (6,375,677).

As to claims 23, 25-26, PENN (Figs. 3 and 12a-12i) shows a stent having every limitations as recited in the claims such as one pattern at both ends and another different pattern in the mid section, linear struts between patterns, the mid section includes articulations 270.

As to claim 24, PENN (Figs. 12a-12i) shows some undulating members of the stent.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 13-15, 28-29, 31-32, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over PENN et al. (6,375,677) in view of CALLOL et al. (6,174,329).

As to claims 1-2, 14, 28-29, 31-32, 34, 36, PENN discloses substantially all the limitations in the claims, except for two layers of coatings not more than 10 microns. CALLOL (claims 1 and 4) discloses a stent having an inner coating layer of a thickness from 0.01 to 25 microns and an outer coating layers of a thickness from 1.0 to 50 microns. Because there is no specific name for a biological substance in the claim, inner and outer layers of the coatings, which are of biological compatible substances and therefore can be considered in a broad sense as biological substances.

As to claim 13, PENN and CALLOL do not disclose both coatings are of a radiopaque substance. However, it is just a matter of design choice to have two coatings of a radiopaque material.

As to claim 15, PENN and CALLOL do not disclose both coatings are of a polymeric substance. However, it is just a matter of design choice to have two coatings of a polymeric substance.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  

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VQB  
1/8/2004